APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,815	02/05/2004	Shugong Xu	SLA1535	5959

7590   09/03/2008

Gerald W. Maliszewski
P.O. Box 270829
San Diego, CA 92198-2829

EXAMINER
SIDDIQI, MOHAMMAD A

ART UNIT	PAPER NUMBER
2154	

MAIL DATE	DELIVERY MODE
09/03/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/772,815	XU, SHUGONG
	Examiner	Art Unit
	MOHAMMAD A. SIDDIQI	2154

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>13 August 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment: a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *None*.

   Claim(s) objected to: *None*.

   Claim(s) rejected: *1-4,7,8,11-15,18,19,22-25,28,31-35,38 and 41-44*.

   Claim(s) withdrawn from consideration: *None*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Nathan J. Flynn/
Supervisory Patent Examiner, Art Unit 2154

Continuation of 11. does NOT place the application in condition for allowance because: In response to 101 rejection, rejection to Independent claims 22, 32 and their dependent claims under 35 U.S.C. 101 is maintained. The language of the claims raises a question as to whether the claims are directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful and tangible result. The various steps receiver and de-jitter module are software constructs performing various functionalities. These functionalities do not manipulate any hardware or tangible entity. Therefore, these software constructs are non statutory entities. Applicant is requested to point disclosure where any hardware element (memory, computer readable or storage media) has been manipulated. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965).

In response to Applicant's argument, Ueda does not disclose "accessing an index field in the RTP packet header (504, fig 25, para #0095) or that uses the index to point to a PCR MPEG2TS randomly positioned ", the examiner respect fully disagrees. Ueda discloses Ueda disclose accessing an index field in the RTP packet header (504, fig 25, para #0095) or that uses the index to point to a PCR MPEG2TS randomly positioned (storage area is managed by using indexes, para#0095) in the RTP packet payload (fig 4, para #0095; #0099)..

28.   In the light of the forgoing discussion, the Examiner's conclusion is that the subject matter defined by the instant claims would have been obvious within the meaning of 35 U.S.C. 103(a). In response to Applicant's arguments against the references individually, one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case Ueda disclose accessing an index field in the RTP packet header (504, fig 25, para #0095) or that uses the index to point to a PCR MPEG2TS randomly positioned (storage area is managed by using indexes, para#0095) in the RTP packet payload (fig 4, para #0095; #0099). Ando discloses accessing the timestamp carried in the RTP packet includes accessing a timestamp having a resolution of greater than 500 nanoseconds (ns) (col 1, lines 33-43); and, wherein using the timestamp to eliminate variable transmission delay jitter, associated with the PCR MPEG2TS, includes reducing the jitter to less than 500 ns (col 1, lines 33-43). It would have been an obvious modification to the system disclosed by Ueda to include the teachings of Ando to synchronize the RTP timestamp to the value stored in the TS packet.